

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

**FILE:** B-221336, B-221336.2 **DATE:** April 7, 1986

**MATTER OF:** Alamo Technology, Inc.; National  
Technologies Associates, Inc.

## DIGEST:

1. Selection for award of the offeror whose proposal was ranked highest technically and who proposed the highest costs was justified where the solicitation stated that source selection would be made on the basis of technical merit, management abilities, and proposed costs, in that order of importance, and the agency reasonably determined that the proposal represented the best overall value.
2. Contention that agency failed to conduct adequate discussions is without merit where the agency issued a list of questions to each offeror under the heading "Clarification Requests/Deficiency Notices" and allowed offerors an opportunity to submit best and final offers.
3. GAO has no basis to question an agency's determination to credit an offeror with the experience of personnel it hired away from the incumbent contractor where such determination is reasonable and consistent with the solicitation's evaluation criteria.
4. Competitive advantage that an offeror may enjoy is not objectionable where it is not the result of unfair action by the government.

Alamo Technology, Inc., and National Technologies Associates, Inc. (NTA), protest the selection of Systems & Logistics Corporation (SLC) for award of a contract under request for proposals (RFP) No. F04704-86-R-0007, issued by the Air Force Ballistic Missile Office, Norton Air Force

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Base, California. Each protester raises several issues, but the central issue common to both protests is that the agency has selected SLC for award even though that firm's estimated costs are significantly higher than those of either protester. For the reasons discussed below, we deny the protests in part and dismiss them in part.

#### Background

The agency issued the solicitation to obtain technical support services through a cost-plus-fixed-fee contract in connection with the Peacekeeper and Small Missile Integrated Logistics Support program. Basically, the agency's requirement is for analysis of data generated by other logistics support contractors and for assistance with the development of an improved logistics support program. The RFP stated that award would be made to the offeror who best could accomplish the work necessary to satisfy the agency's requirement "in a manner most advantageous to the Government." The RFP stated further that this was a technical competition and that in evaluating proposals the agency would place primary emphasis on technical factors. Evaluation of an offeror's management proposal would be of lesser importance, and cost would be third in importance. The solicitation stated that cost would not be scored or rated, but that the agency would evaluate an offeror's cost proposal to ensure that projected cost data were complete, realistic, and credible. The solicitation reserved the agency's right to award a contract to other than the low offeror and said that once the agency had ranked offerors on the basis of technical and management evaluations "cost will be compared against these rankings to determine the combination most advantageous to the Government."

The agency received four proposals in response to the solicitation. It eliminated one offeror from the competitive range and commenced discussions with the other three offerors. By letters dated November 27, 1985, the contracting officer transmitted to each offeror in the competitive range a separate list of questions under the heading "Clarification Requests/Deficiency Notices" and requested written responses prior to the dates set for oral discussions. Following the oral discussions, the contracting officer requested and received best and final

offers. The agency further evaluated the proposals as amended and the source selection authority (SSA) determined that the proposal of SLC offered "the best overall value to the Air Force." The agency so advised the other two offerors, who subsequently filed these protests. No award has been made.

### Grounds for Protests

#### Alamo Technology

Alamo's first basis for protest is that the agency did not hold adequate discussions because it failed to advise the firm of any deficiencies in its proposal. Second, Alamo says award of a contract to SLC would be considerably more costly to the government than would an award to Alamo.<sup>1/</sup> In this connection, Alamo complains that the evaluation criteria contained in the RFP afforded the agency "too much discretion to ignore cost," and that it is inconceivable that SLC's technical and management advantage would justify an award to that firm in the face of Alamo's significant cost advantage. Finally, Alamo complains that the agency improperly credited SLC, a newly formed company, with the management experience of one of that firm's principals, and notes that the solicitation stated that offerors with no prior experience would not be scored at all for that criterion under the management factor.

#### NTA

NTA alleges that some of the evaluation criteria contained in the RFP indicate a "favorable predisposition" toward companies such as SLC that only recently have been formed. Specifically, NTA says that the statements in the solicitation indicating that companies with no prior experience would not be scored for that criterion in the management area penalize companies that do have related experience. NTA raises this same objection regarding the solicitation statement that past performance with respect to cost would not be scored or rated.

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<sup>1/</sup> Alamo has requested that we not disclose specific cost data since award has not yet been made.

NTA alleges further that the incumbent contractor, Ultrasonics, Inc., provided technical and financial assistance to SLC in the preparation of its proposal. NTA says that SLC had an advantage over other offerors because one of SLC's principals was formerly an officer of Ultrasonics and, thus, had access to restricted information.

Finally, NTA questions the propriety of awarding a contract to SLC when the latter's proposed costs were some \$1.2 million higher than NTA's proposed costs.

### Analysis

The agency argues that the objections of the protesters to the solicitation's evaluation criteria are untimely. We agree. Our Bid Protest Regulations provide that protests based upon alleged improprieties in a solicitation that are apparent prior to the receipt of initial proposals must be filed prior to that time. 4 C.F.R. § 21.2(a)(1) (1985). Therefore, to the extent that these protests challenge the evaluation criteria set forth in the solicitation--either as not placing sufficient emphasis on cost or as favoring new companies such as the proposed awardee--they are untimely and will not be considered. Warren Management, Inc., B-217257, Apr. 9, 1985, 85-1 CPD ¶ 407. Alamo argues that even if its protest of the treatment of cost in the RFP's evaluation scheme is untimely, we should consider the protest under the significant issue exception to our timeliness rules. 4 C.F.R. § 21.2(c). We do not agree. This exception, which we construe strictly, is limited to considering untimely protests that raise issues of widespread interest to the procurement community and that have not been previously considered. Engineering and Professional Services, B-219657, et al., Dec. 3, 1985, 85-2 CPD ¶ 621. We have previously considered protests of the relative value accorded to cost in an evaluation scheme. Technical Services Corp., 64 Comp. Gen. 245 (1985), 85-1 CPD ¶ 152.

As we read the protests, however, particularly Alamo's, we think the fundamental concern is not that the solicitation assigned too little weight to cost, but

rather that the agency appears to have ignored cost altogether in selecting SLC for award. Unlike the announced evaluation criteria, the agency's judgments and conclusions based on the technical and cost evaluation results became apparent only when it announced the proposed award to SLC. We think, therefore, that Alamo and NTA have timely raised the issue of whether the SSA made a proper cost/technical tradeoff in selecting the highest-rated, highest-cost offeror for award. The protesters request that we conduct an in camera review of the evaluation documents to determine whether the selection of SLC was proper.

A contracting agency's source selection officials have broad discretion in determining the manner and extent to which they will make use of technical and cost evaluation results. Columbia Research Corp., 61 Comp. Gen. 194 (1982), 82-1 CPD ¶ 8. Provided cost is not ignored altogether, System Development Corp., B-213726, June 6, 1984, 84-1 CPD ¶ 605, selection officials may make cost versus technical tradeoffs, and the extent to which one may be sacrificed for the other is governed by the tests of rationality and consistency with the established evaluation factors. Bank Street College of Education, 63 Comp. Gen. 393 (1984), 84-1 CPD ¶ 607; Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 ¶ 325. The determining element is the considered judgment of the procurement officials concerning the significance of the difference in technical merit among the offerors. Columbia Research Corp., supra. This Office will question that judgment if there is a clear showing of unreasonableness. American Coalition of Citizens with Disabilities, Inc., B-205191, Apr. 6, 1982, 82-1 CPD ¶ 318.

In this case, the agency's evaluation of the proposals did not involve numerical scoring. Rather, the evaluators rated the technical proposals as either exceptional, acceptable, marginal, or unacceptable for the various factors or "items" under each evaluation area. The evaluators submitted the ratings to an "Item Chairperson" who, following further analysis, arrived at an overall rating for each item. The chairperson prepared a summary narrative and a rating chart for presentation to the SSA. A separate cost

panel evaluated each offeror's proposed costs, made a number of adjustments, and presented the results to the SSA in chart and narrative form.

The summary evaluation documents indicate that, overall, the evaluators considered the proposals of both Alamo and NTA to be generally acceptable in the technical and management areas. Alamo's proposal received marginal ratings, however, under several technical evaluation items. For example, Alamo received a marginal rating under logistics tradeoff studies because its proposal had either omitted or failed to address adequately three tasks identified in the statement of work. The proposal of NTA received a number of marginal ratings in both the technical and the management areas. In the technical area, for example, the agency considered NTA's proposal to be marginal under logistics support planning because it reflected a "textbook approach" with little understanding of the Ballistic Missile Office. By contrast, the proposal of SLC received exceptional ratings under two technical items, acceptable ratings for all other technical items, and an acceptable rating in the management area.

In selecting SLC for award, the SSA prepared a written source selection decision. The decision states that the selection of SLC was based upon the SSA's assessment of the proposals as originally submitted, changes made as a result of discussions, the advice of the proposal evaluation board, and SLC's ability to perform the requirement. All of this was measured, reports the SSA, against the evaluation factors stated in the solicitation: technical, management, and cost, in that order of importance. The SSA noted that the proposals of both Alamo and NTA contained "several marginal areas" that had not been corrected through discussions. He stated that although all the proposals in the competitive range were "otherwise" adequate, the SLC proposal offered the best technical and management approaches. The SSA cited SLC's comprehensive understanding of the missile logistics support program generally and some of its unique aspects in particular. Of significant merit, said the SSA, was SLC's proposed handling of the logistics tradeoff studies and performance factors. In both areas, the SLC proposal "far exceeded the Air Force

standards," according to the SSA. As indicated above, the SSA concluded that the SLC proposal offered "the best overall value to the Air Force."

Upon review of the source selection decision, both protesters assert that the decision is defective because it does not contain a "specific determination" that the technical superiority of the SLC proposal warrants the selection of that firm for award despite the higher estimated costs. The protesters maintain that such a determination is required under Systems Development Corp., B-213726, supra. The protesters also suggest that the proposals were essentially equal technically and that, therefore, cost should have been the deciding factor.

We reviewed all of the evaluation documents in camera and conclude that the protesters' contentions are without merit. First, from our reading of the source selection decision, it appears that the SSA regarded the protesters' proposals as adequate, in all except the items deemed marginal,<sup>2/</sup> but considered the SLC proposal to be technically superior. These determinations were consistent with the ratings of the evaluators, whose judgments do not appear to us unreasonable. Further, although it is true that the source selection decision does not state explicitly that payment of the cost premium inherent in SLC's proposal was justified by the proposal's superior technical merit, we think such a determination is implied by the use of the phrase "best overall value" and the statement that cost was one of the criteria against which the proposals were judged. In short, while it could have been more clearly explained, the selection of SLC was entirely consistent with the announced evaluation criteria--which informed prospective offerors that this was a technical, not a cost, competition--and has not been shown to be clearly

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<sup>2/</sup> These items were rated "yellow" in the final evaluation. Yellow means a proposal element which fails to meet RFP standards and signifies a low probability of success. Air Force Regulation 70-15, Feb. 22, 1984, ¶ 3-9.

unreasonable. We therefore have no basis for objecting to the source selection. Bank Street College of Education, 63 Comp. Gen. 394, supra.

Alamo also contends that the agency did not alert it to any perceived deficiencies in its proposal. This contention is also without merit. The agency commenced discussions by issuing a letter to each offeror containing a list of questions under the heading "Clarification Requests/Deficiency Notices." Based on our review of the list of 17 questions submitted to Alamo, we conclude that the agency conducted adequate discussions since the agency's questions led Alamo into areas of its proposal that the agency considered to be weak and the agency allowed Alamo the opportunity to improve its proposal in its best and final offer. See SISA Pharmaceutical Laboratories Inc., B-214314, Dec. 3, 1984, 84-2, CPD ¶ 595. The fact that Alamo was not able to improve its proposal so that it was rated as highly as that of SLC does not mean that the agency's discussions were not adequate.

Alamo also complains that the agency credited SLC with the experience of one of its principals who formerly was employed by the incumbent, Ultrasystems. Alamo cites Airtronix, Inc., B-217087, Mar. 25, 1985, 85-1 CPD ¶ 345, in support of its contention that this was improper. In that case, we held that the agency reasonably could have concluded that the protester was not entitled to be credited with the experience of an engineer the protester had hired away from a competitor. The holding was based on our position that a contracting agency is responsible for determining the relative merits of proposals and that this Office will question the determination only if shown to be unlawful or unreasonable. We did not say in Airtronix that it is never proper for an agency to credit an offeror with the experience of personnel formerly employed by others.

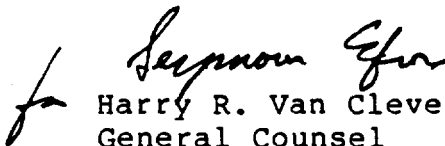
Alamo contends, however, that here the solicitation's evaluation criteria did not permit a corporate offeror that only recently had been formed, such as SLC, to receive evaluation credit for the experience of its personnel. In support of this contention, Alamo cites paragraph (d)(2)(ii)(B) of the evaluation criteria which states: "Offerors



with no relevant past performance will not be scored under this criteria." The criterion referred to, however, is "Past Performance," which was only one of the two criteria the solicitation said would be used to evaluate the items listed in the management area. The other criterion, "Soundness of Approach," involved an assessment of the offeror's proposal for managing the work to be performed. We think the agency reasonably could evaluate under this criterion the experience and capabilities of an offeror's proposed management personnel.

Finally, with respect to NTA's complaint that SLC had an advantage in this procurement because it may have received assistance from the incumbent contractor in preparing its proposal, we have recognized that some firms may enjoy a competitive advantage because of particular business circumstances. Marine Hydraulics International, Inc., B-219683, Nov. 26, 1985, 85-2 CPD ¶ 602. Such advantages only become objectionable, however, when they result from a preference or other unfair action by the government. Holmes & Narver Services, Inc., B-208652, June 6, 1983, 83-1 CPD ¶ 605. In this case, NTA has not shown that any action on the part of the government resulted in SLC having an unfair competitive advantage.

The protest is denied in part and dismissed in part.

  
Harry R. Van Cleve  
General Counsel